



January 28, 2005

## SENATE BILL No. 452

DIGEST OF SB 452 (Updated January 25, 2005 11:37 am - DI 44)

**Citations Affected:** IC 8-10.

**Synopsis:** Self-liquidating projects at port commission. Expands the definition of self-liquidating project for purposes of the port commission statute to include projects: (1) for which payments under leases from sources other than rentals are available for debt service and maintenance expenses; or (2) that are structured in such a manner that there is no recourse against the state or the port commission. (Under current law, self-liquidating projects are exempt from certain provisions concerning interest rates on bonds, bond sale procedures, and contracting procedures.) Specifies that revenue bonds issued by the port commission are not a debt of the commission and are payable solely from funds pledged for their payment. Makes conforming changes.

**Effective:** July 1, 2005.

**Kenley**

January 18, 2005, read first time and referred to Committee on Tax and Fiscal Policy.  
January 27, 2005, amended, reported favorably — Do Pass.

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SB 452—LS 7934/DI 44+



January 28, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## SENATE BILL No. 452

A BILL FOR AN ACT to amend the Indiana Code concerning transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-10-1-4 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2005]: Sec. 4. Revenue bonds issued under the  
3 provisions of this article: ~~shall~~

4 (1) ~~do not be deemed to~~ constitute a debt of **the commission**, the  
5 state, or ~~of~~ any political subdivision ~~thereof of the state~~, or a  
6 pledge of the faith and credit of **the commission**, the state, or ~~of~~  
7 any ~~such~~ political subdivision ~~but such bonds shall be of the~~  
8 **state;**

9 (2) **are** payable solely from the funds pledged for their payment  
10 as authorized in this article, unless ~~such the~~ bonds are refunded  
11 by refunding bonds issued under the provisions of this chapter,  
12 which ~~refunding bonds~~ shall be payable solely from funds  
13 pledged for their payment as authorized ~~herein~~. ~~All such revenue~~  
14 **bonds shall in this article; and**

15 (3) **must** contain on ~~the their~~ face ~~thereof~~ a statement to the effect  
16 that the bonds, as to both principal and interest, are not an  
17 obligation of **the commission**, the state, ~~of Indiana~~, or of any

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political subdivision ~~thereof~~, **of the state**, but are payable solely from revenues pledged for their payment.

All expenses incurred in carrying out the provisions of this article ~~shall be~~ **are** payable solely from funds provided under the authority of this article and nothing in this article ~~contained~~ shall be construed to authorize the commission to incur indebtedness or liability on behalf of or payable by the state or any political subdivision ~~thereof~~. **of the state.**

SECTION 2. IC 8-10-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) The commission is hereby authorized and empowered to acquire by purchase whenever it shall deem such purchase expedient, any land, property, rights, ~~right-of-ways~~, **rights of way**, franchises, easements, and other interests in lands, including lands under water and riparian rights, as it may deem necessary or convenient for the construction and operation of any port or project, upon such terms and at such price as may be considered by it to be reasonable and can be agreed upon between the commission and the owner thereof, and to take title thereto in the name of the state.

(b) The commission is hereby further authorized and empowered to sell, transfer, and convey any such land or any interest therein so acquired, or any portion thereof, when the same shall no longer be needed for such purposes. The commission is further authorized and empowered to transfer and convey any such lands or interest therein as may be necessary or convenient for the construction and operation of any port or project, or as otherwise required under the provisions of this article. However, no such sale shall be made without first obtaining the approval of the governor, and a sale may not be made at less than the appraised value established by three (3) independent appraisers appointed by the governor. The commission shall be authorized to restrict the use of any land so sold by it and provide for a reversion to the commission in the event the land shall not be used for the purpose represented by the purchaser, and such restrictions and reversions shall be set out in appropriate covenants in the deeds of conveyance, which deeds shall be subject to the approval of the governor.

(c) The commission shall also be authorized to lease, or grant options to lease, to others for development any portion of the land owned by the commission, on such terms as the commission shall determine to be advantageous. All such leases or options to lease which leases cover a period of more than four (4) years shall be subject to the approval of the governor. Leases of lands under the jurisdiction or control of the commission shall be made only for such uses and purposes as are calculated to contribute to the growth and development

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of ports, terminal facilities, and projects under the jurisdiction or control of the commission. In the event the commission shall lease to others a building or structure financed by the issuance of revenue bonds under IC 8-10-4, the rental shall be in an amount at least sufficient to pay the interest on and principal of the amount of such bonds representing the cost of such building or structure to the extent such interest and principal is payable during the term of the lease; as well as to pay the cost of maintenance, repair and insurance for such building and a reasonable portion of the commission's administrative expense incurred during the term of the lease which is allocable to such building or structure. **transaction must be structured as a self-liquidating or nonrecourse project (as defined in IC 8-10-4-1).**

(d) No tenant, lessee, licensee, owner of real estate located within a port or project, or other person or entity has any right, claim, title, or interest in any real estate, personal property, or common property owned by the commission, a port, a project, or the state, unless a written agreement entered into by the commission expressly provides:

(1) the exact nature and extent of the right, claim, title, or interest;

(2) all the conditions under which the right, claim, title, or interest is granted; and

(3) a legal or complete description of the specific property.

SECTION 3. IC 8-10-1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. In the discretion of the commission any bonds issued under the provisions of this act may be secured by a trust agreement by and between the commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within the state, except as provided in IC 8-10-4. Any resolution adopted by the commission providing for the issuance of revenue bonds and any trust agreement pursuant to which such bonds are issued may pledge or assign all or any portion of the revenues received or to be received by the commission except such part as may be necessary to pay the cost of the commission's administrative expenses, operation, maintenance and repair and to provide reserves therefor and depreciation reserves required by any bond resolution adopted or trust agreement executed by the commission, but the commission shall not convey or mortgage any port or project or any part thereof, except for self liquidating **or nonrecourse** projects under IC 8-10-4. In authorizing the issuance of bonds for any particular port or project, the commission may limit the amount of such bonds that may be issued as a first lien and charge against the revenues pledged to the payment of such bonds or the commission may authorize the issuance from time to time thereafter of additional bonds secured by the

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1 same lien to provide funds for the completion of the port or project on  
 2 account of which the original bonds were issued, or to provide funds to  
 3 pay the cost of additional projects undertaken in connection with the  
 4 development of the port or project, or for both such purposes. Such  
 5 additional bonds shall be issued on such terms and conditions as may  
 6 be provided in the bond resolution or resolutions adopted by the  
 7 commission and in the trust agreement or any agreement supplemental  
 8 thereto and may be secured equally and ratably without preference,  
 9 priority or distinction with the original issue of bonds or may be made  
 10 junior thereto. Any pledge or assignment made by the commission  
 11 pursuant hereto shall be valid and binding from the time that the pledge  
 12 or assignment is made and the revenues so pledged and thereafter  
 13 received by the commission shall immediately be subject to the lien of  
 14 such pledge or assignment without physical delivery thereof or further  
 15 act. The lien of such pledge or assignment shall be valid and binding  
 16 against all parties having claims of any kind in tort, contract or  
 17 otherwise against the commission irrespective of whether such parties  
 18 have notice thereof. Neither the resolution nor any trust agreement by  
 19 which a pledge is created or assignment made need be filed or recorded  
 20 except in the records of the commission. Any such trust agreement or  
 21 any resolution providing for the issuance of such bonds may contain  
 22 such provisions for protecting and enforcing the rights and remedies of  
 23 the bondholders as may be reasonable and proper and not in violation  
 24 of law, including, but not limited to, covenants setting forth the duties  
 25 of the commission in relation to the acquisition of property and the  
 26 construction, improvement, maintenance, repair, operation and  
 27 insurance of the port or project in connection with which such bonds  
 28 shall have been authorized, the rates of fees, tolls, rentals or other  
 29 charges, to be collected for the use of the project, and the custody,  
 30 safeguarding and application of all moneys, and provisions for the  
 31 employment of consulting engineers in connection with the  
 32 construction or operation of such project. It shall be lawful for any bank  
 33 or trust company incorporated under the laws of the state which may  
 34 act as depository of the proceeds of bonds or other funds of the  
 35 commission, to furnish such indemnifying bonds or to pledge such  
 36 securities as may be required by the commission. Any such trust  
 37 agreement may set forth the rights and remedies of the bondholders and  
 38 of the trustee, and may restrict the individual right of action by  
 39 bondholders as is customary in trust agreements or trust indentures  
 40 securing bonds or debentures of private corporations. In addition to the  
 41 foregoing, any such trust agreement may contain such other provisions  
 42 as the commission may deem reasonable and proper for the security of

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the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the port or project.

SECTION 4. IC 8-10-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) As used in this chapter, "self-liquidating **or nonrecourse** project" ~~shall mean~~ **means:**

(1) a project for which a lease or leases have been executed providing for payment ~~of rental~~ in an amount ~~at least the commission determines to be~~ sufficient to pay:

(A) the interest and principal of ~~such the~~ bonds to be issued to finance the cost of ~~such the~~ project; and ~~further providing for the payment by the lessee or lessees of~~

(B) all costs of maintenance, repair, and insurance of ~~such the~~ project; **or**

(2) **a project that is structured in such a manner that the commission determines there is no recourse against the state or the Indiana port commission.**

(b) Other words and terms used in this chapter shall have the same meaning as in other provisions of this article, unless otherwise specifically provided.

SECTION 5. IC 8-10-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. In addition to the powers conferred upon the Indiana port commission by other provisions of this article, the commission, in connection with any self-liquidating **or nonrecourse** project, shall have the following powers notwithstanding any other provision of this article to the contrary:

~~(a)~~ (1) The revenue bonds issued by the commission to finance the cost of such self-liquidating **or nonrecourse** project may be issued without regard to any maximum interest rate limitation in this article or any other law.

~~(b)~~ (2) The revenue bonds issued by the commission to finance the cost of such self-liquidating **or nonrecourse** project may be sold in such manner, either at public or private sale, as the commission may determine, and the provisions of IC 4-1-5 shall not be applicable to such sale.

~~(c)~~ (3) IC 4-13.6, IC 5-16-1, IC 5-16-2, IC 5-16-3, IC 5-16-5, IC 5-16-5.5, IC 5-16-6, IC 5-16-6.5, IC 5-16-8, IC 5-16-9, IC 5-16-10, IC 5-16-11, IC 5-16-11.1, IC 8-10-1-7(12), IC 8-10-1-29, and IC 36-1-12 do not apply to a **self-liquidating or nonrecourse** project. ~~to be leased to a private party whose payments are expected to be sufficient to pay all debt service on bonds issued by the commission to finance the project.~~

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## COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 452, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-10-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. Revenue bonds issued under the provisions of this article: ~~shall~~

(1) ~~do not be deemed to~~ constitute a debt of **the commission**, the state, or ~~of~~ any political subdivision ~~thereof of the state~~, or a pledge of the faith and credit of **the commission**, the state, or ~~of~~ any ~~such~~ political subdivision ~~but such bonds shall be of the state;~~

(2) **are** payable solely from the funds pledged for their payment as authorized in this article, unless ~~such the~~ bonds are refunded by refunding bonds issued under the provisions of this chapter, which ~~refunding bonds~~ shall be payable solely from funds pledged for their payment as authorized ~~herein~~. **All such revenue bonds shall in this article; and**

(3) **must** contain on ~~the their~~ face ~~thereof~~ a statement to the effect that the bonds, as to both principal and interest, are not an obligation of **the commission**, the state, ~~of Indiana~~, or of any political subdivision ~~thereof, of the state~~, but are payable solely from revenues pledged for their payment.

All expenses incurred in carrying out the provisions of this article ~~shall be~~ **are** payable solely from funds provided under the authority of this article and nothing in this article ~~contained~~ shall be construed to authorize the commission to incur indebtedness or liability on behalf of or payable by the state or any political subdivision ~~thereof, of the state.~~

SECTION 2. IC 8-10-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) The commission is hereby authorized and empowered to acquire by purchase whenever it shall deem such purchase expedient, any land, property, rights, ~~right-of-ways, rights of way~~, franchises, easements, and other interests in lands, including lands under water and riparian rights, as it may deem necessary or convenient for the construction and operation of any port or project, upon such terms and at such price as may be considered by it to be reasonable and can be agreed upon between the commission

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and the owner thereof, and to take title thereto in the name of the state.

(b) The commission is hereby further authorized and empowered to sell, transfer, and convey any such land or any interest therein so acquired, or any portion thereof, when the same shall no longer be needed for such purposes. The commission is further authorized and empowered to transfer and convey any such lands or interest therein as may be necessary or convenient for the construction and operation of any port or project, or as otherwise required under the provisions of this article. However, no such sale shall be made without first obtaining the approval of the governor, and a sale may not be made at less than the appraised value established by three (3) independent appraisers appointed by the governor. The commission shall be authorized to restrict the use of any land so sold by it and provide for a reversion to the commission in the event the land shall not be used for the purpose represented by the purchaser, and such restrictions and reversions shall be set out in appropriate covenants in the deeds of conveyance, which deeds shall be subject to the approval of the governor.

(c) The commission shall also be authorized to lease, or grant options to lease, to others for development any portion of the land owned by the commission, on such terms as the commission shall determine to be advantageous. All such leases or options to lease which leases cover a period of more than four (4) years shall be subject to the approval of the governor. Leases of lands under the jurisdiction or control of the commission shall be made only for such uses and purposes as are calculated to contribute to the growth and development of ports, terminal facilities, and projects under the jurisdiction or control of the commission. In the event the commission shall lease to others a building or structure financed by the issuance of revenue bonds under IC 8-10-4, ~~the rental shall be in an amount at least sufficient to pay the interest on and principal of the amount of such bonds representing the cost of such building or structure to the extent such interest and principal is payable during the term of the lease, as well as to pay the cost of maintenance, repair and insurance for such building and a reasonable portion of the commission's administrative expense incurred during the term of the lease which is allocable to such building or structure.~~ **transaction must be structured as a self-liquidating or nonrecourse project (as defined in IC 8-10-4-1).**

(d) No tenant, lessee, licensee, owner of real estate located within a port or project, or other person or entity has any right, claim, title, or interest in any real estate, personal property, or common property owned by the commission, a port, a project, or the state, unless a written agreement entered into by the commission expressly provides:

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- (1) the exact nature and extent of the right, claim, title, or interest;
- (2) all the conditions under which the right, claim, title, or interest is granted; and
- (3) a legal or complete description of the specific property."

Page 3, line 12, strike "at least" and insert "**the commission determines to be**".

Page 3, line 19, before "there" insert "**the commission determines**".

Page 3, line 42, after "a" insert "**self-liquidating or nonrecourse**".

Page 3, line 42, after "project" insert ".".

Page 3, line 42, strike "to be".

Page 4, strike lines 1 through 3.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 452 as introduced.)

KENLEY, Chairperson

Committee Vote: Yeas 11, Nays 0.

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